

**NORTH CAROLINA  
DURHAM COUNTY**

**DECLARATION OF RESTRICTIVE COVENANTS**

This Declaration of Restrictive Covenants (hereinafter "Declaration") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by Builders of Hope, Inc., a non-profit corporation organized and existing under the laws of North Carolina.

Definitions

"Agreement" means a certain CHDO Grant Agreement between the City and the Declarant, dated \_\_\_\_\_. An executed original of the Agreement is on file in the office of the City Clerk and available for public review.

"City" means the City of Durham, a North Carolina municipal corporation.

"Declarant" means Builders of Hope, Inc., its successors, successors in title and assigns, and any and all persons and entities having any right, title or interest in the Property.

"Dwelling Unit" shall be defined as provided in the Agreement.

"Period of Affordability" means the period beginning on the date that is the later of:  
a) the date of this Declaration, or the completion of the Dwelling Unit, as evidenced by issuance of a certificate of occupancy for such Dwelling Unit and ending on the date that is Fifteen (15) years from the date of commencement of the Period of Affordability.

"Property" means all and any part of the real property located at \_\_\_\_\_, as referenced in Attachment A of the Agreement and made a part of this Declaration.

Recitals

The Agreement provides, among other things, for the City to provide one or more grant(s) to the Declarant to acquire, renovate and/or construct improvements on the Property. A source of funding is a grant to the City from the United States Department of Housing and Urban Development (hereinafter "HUD") under the HOME Investments Partnership Program (hereinafter the "HOME Program"). The HOME Program allows action such as recordation of Restrictive Covenants applicable to the Property to preserve the long-term affordability of Dwelling Units to persons of limited income, as provided in the Agreement.

The Declarant expressly acknowledges and recognizes the City's reliance upon this commitment by the Declarant in the City's decision to enter into the Agreement and loan funds to the Declarant. The purpose of this Declaration is to set forth certain covenants, restrictions and requirements pertaining to the Property and to give to the City and HUD, and their successors and assigns, the right to enforce this Declaration.

### Covenants, Restrictions and Requirements

From and after the date of this Declaration, the Property shall be held, sold, transferred and conveyed subject to the covenants, restrictions and requirements hereinafter set forth:

1. During the Period of Affordability, each Dwelling Unit shall be: (1) purchased by and occupied as the principal residence of an income-eligible person or family as prescribed by and in compliance with 24 C.F.R. Section 92.254, as the same may be amended or replaced from time to time; and (2) purchased at a price which does not exceed a maximum sales price set by the City from time to time to assure that the Dwelling Unit is affordable to such income-eligible person or family. The Period of Affordability and the provisions of this Declaration shall be suspended upon foreclosure by a lender or other transfer in lieu of foreclosure, if such foreclosure or transfer recognizes any contractual or legal rights of the City or other eligible persons to take actions that would avoid the termination of low-income affordability. If, however, at any time thereafter during the Period of Affordability (1) the owner of record prior to such foreclosure or transfer in lieu of foreclosure, or (2) any entity that includes such former owner or those with whom the former owner had or has family or business ties, obtains an ownership interest in the Property, then the Period of Affordability and the provisions of this Declaration shall be revived according to their original terms.

2. This Declaration is made for the benefit of the City and HUD, and confers upon the City, HUD, and their respective successors and assigns the right, without limitation, to enforce the provisions of this Declaration.

3. This Declaration may not be amended in any manner whatsoever without the prior written consent of the City and HUD. It shall be within the sole discretion of the City and HUD whether to give such consent. The Declarant shall record any such amendment with the Durham County Register of Deeds, and provide contemporaneous written notice to the City.

4. The covenants, restrictions and requirements of this Declaration shall run with the Property and, except to the limited extent provided in Paragraph 1 of this Declaration, continue in full force and effect until expiration of the Period of Affordability. Except to the limited extent provided in Paragraph 1 of this Declaration, the covenants, restrictions and requirements shall pass to and be binding upon the Declarant's assigns, successors and successors in title to all and any portion of the Property. Except to the limited extent provided in Paragraph 1 of this Declaration, each and every contract, deed or other instrument hereafter executed covering or conveying all or any portion of the Property shall conclusively be held to have been executed, delivered and accepted subject to such covenants, restrictions and requirements regardless of whether the same are set forth in such contract, deed or other instrument. If a portion or portions of the Property are conveyed, all of such covenants, restrictions and requirements shall run to each portion of the Property.

5. Upon expiration of the Period of Affordability, this Declaration shall automatically terminate and be of no further force or effect. The Declarant may record with the Durham County Register of Deeds a written instrument approved by the City further evidencing the termination of this Declaration. The City shall be entitled to thirty (30) days' written notice prior to the recording of any such instrument.

6. If a violation of any of the provisions of this Declaration occurs or is attempted, the City, HUD and their successors and assigns may institute and prosecute any proceeding at law or in equity to: abate, prevent or enjoin any such violation or attempted violation; compel specific performance of this Declaration; and recover monetary damages caused by the violation or attempted violation. Any such violation or attempted violation shall also be an event of default under the Agreement and shall entitle the City and its successors and assigns, among other remedies, to accelerate and declare due and payable in full the outstanding balance of any loans made by the City pursuant to the Agreement.

7. Any failure by the City or HUD to insist upon a strict performance of any covenants, restriction or requirement of this Declaration, or to exercise any option, right or remedy contained or created in this Declaration, shall not be construed as a waiver or relinquishment for the future of such covenant, restriction or requirement; rather, the same shall continue and remain in full force and effect.

8. If a court of competent jurisdiction determines that any of the provisions of this Declaration are void or unenforceable, the remainder of the provisions of this Declaration shall continue in full force and effect.

9. This Declaration shall be duly recorded in of the office of the Register of Deeds for Durham County immediately following its execution.

IN WITNESS WHEREOF, \_\_\_\_\_ has executed this instrument under seal on the date and year first above written.

Builders of Hope, Inc.

\_\_\_\_\_  
Nancy Murray, Chief Executive Officer

ATTEST:

\_\_\_\_\_(SEAL)  
Secretary

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

I, \_\_\_\_\_, a notary public for the aforesaid county and state, certify that \_\_\_\_\_ personally appeared before me this day, and acknowledged that he or she is \_\_\_\_\_ Secretary of Builders of Hope, Inc., a non-profit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Chief Executive Officer, whose name is Nancy Murray, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the \_\_\_\_ day of \_\_\_\_\_, 2011.

My commission expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public